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Via Electronic Mail and Hand Delivery – FILED UNDER SEAL

Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007
<ForrestNYSDChambers@nysd.uscourts.gov>

Re: Krechmer v. Tantaros | 16-cv-7820

Dear Judge Forrest:

Although Defendants are free to seek leave to amend the related case, serve counterclaims, and seek a sealing order relative to evidence provided to Fox News,¹ I cannot let Attorney Burstein's regular and ongoing accusations of improper conduct go unanswered. I unequivocally did not breach any order of this Court and would be prepared to testify to the same before this Court.

As the Court recognized, there was no "injunction in place that prevents right now public statements", only a sealing order, when counsel for Plaintiff previously spoke with counsel for Fox News. See Transcript of Nov. 3, 2016 Hearing at 2:15-3:3. Thus, there is no impropriety for having made counsel for Fox News aware that I represent Plaintiff.

Further, there is no improper "collusion" between Plaintiff Michael Malice and Fox News. Rather, our communications with Defendant and the Court simply track the progress of the other litigation. As I indicated in my letter to Defendants' counsel, the impending likelihood of that litigation being dismissed in favor of arbitration, as happened with the state court case, raised concerns regarding preservation of documents. However, Mr. Burstein clarified the timetable in response, resulting in Plaintiff not seeking relief from this Court on the issue.

Defendants themselves made the relatedness question ripe when they brought up the ghostwriter issue in the Fox News dispute. The timing had nothing to do with my letter to Mr. Burstein, but rather with when he filed his response to the motion to compel arbitration in that matter. However, my letter to Mr. Burstein admittedly arose out of knowledge of that motion and my opinion of its likelihood of success.

¹ We had no idea until Mr. Burstein's letter what communications he had with Fox News regarding the arbitration and related document production with the exception of his refusal to produce documents involving Mr. Malice based on a court order. However, as he is now revealing the intimate details of the arbitration, this suggests it might not be as confidential as claimed.

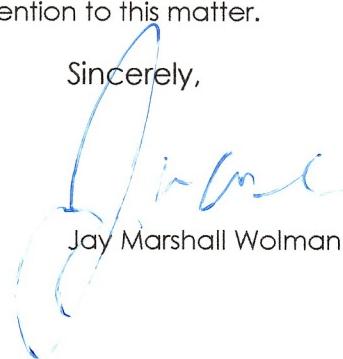
Defendants are correct that I omitted any mention of my conversation with counsel for Fox News regarding arbitration discovery in my letter to the Court. It was not germane to the issue of giving notice of relatedness. Nor was I attempting to hide anything from the Court; I gave express permission for Fox News to expressly disclose that we were consulted on the relief requested and consented.

In speaking with counsel for Fox News, I took pains to hew closely to the Court's orders. I stated that I was under a court order. Counsel for Fox News expressed displeasure and asked about the case, whereupon I gave them the civil action number and informed them that any application would not be permitted to use names. This was the exact process permitted by the Court, and it is improper for Defendants to claim a breach for my doing precisely what the Court instructed. See Transcript at 23:1-9.

Defendants' suggestion that I must have made additional disclosure based on use of the term "ghostwriter" flies in the face of history; since November 4, 2014, predating his agreements with Defendants, Mr. Malice has been described on Wikipedia as a "ghostwriter".² See <https://en.wikipedia.org/w/index.php?title=Michael_Malice&oldid=632350664>. Moreover, Fox News, in its letter, used the term "Writing Coach", the exact term publicly used to describe Mr. Malice in the published acknowledgments of *Tied Up in Knots*, rather than the "ghostwriter" term to which Defendants object. Yet Defendants complain of the use of either term: if Fox News uses it, the sealing order must have been breached, but if they do not use it, that is proof of collusion to cover up a breach. There was no breach—both Mr. Dietl and Fox News used terms that were published prior to the institution of this suit and Defendants' speculative accusations do not warrant any finding of breach.

I again apologize, but I cannot allow an accusation of violation of this Court's order to go unanswered. Thank you for your attention to this matter.

Sincerely,



Jay Marshall Wolman

cc: Counsel of Record (via email)

² The term arose in the related litigation based upon an article about Fox News's apparent investigator, Bo Dietl, using the term "ghostwriter" to describe Mr. Malice. Presumably, Mr. Dietl saw Wikipedia or one of the hundreds of other webpages describing Mr. Malice as a ghostwriter, as any competent former New York City Police detective would find.